SUPREME COURT, U.S.
No. 70-227
Supreme Court
FILED
OCT 1 1970
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1970

70-227

YI AU LAU and LAM SAI TING, PETITIONERS

v.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1770

YI AU LAU and LAM SAI TING, PETITIONERS

v.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioners are Chinese seamen who had jumped ship and were thereafter ordered deported after evidentiary hearings before a special inquiry officer of the Immigration and Naturalization Service. The orders were affirmed in lengthy opinions by the Board of Immigration Appeals (Pet. App. 18a-27a)

and the Court of Appeals for the District of Columbia (Pet. App. 1a-16a). The petition does not question the sufficiency of the evidence upon which the deportation orders were based, but basically urges that the evidence was obtained in violation of the Fourth Amendment.[1] This question was thoroughly considered and rejected by the court below and no further review is warranted.

Petitioners were arrested by immigration officers at their place of employment, a restaurant (Trader Vic's) situated in the Statler Hotel in downtown Washington, D. C. After receiving an informant's tip that aliens unlawfully in this country were employed there, the officers went to the restaurant to investigate; the restaurant had been under periodic surveillance by the Washington immigration office during the preceding year. The agents had no warrants, since the information which they had received lacked requisite specificity. While some of the officers stationed themselves at the main exits, three entered the restaurant and proceeded into the kitchen.[2] Be-

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[1] A similar issue is presented in the petition in *Tit Tit Wong* v. *Immigration and Naturalization Service*, No. 1787, this Term, which was argued together with this case in the court of appeals. While similar legal issues are involved, the cases involve different factual backgrounds and we are separately responding to the petition in No. 1787.

[2] The officer in charge of the detail testified that they received permission to enter the kitchen from the assistant manager. The latter testified that he did not explicitly grant them permission but did not claim to have expressly forbidden the entry. The special inquiry officer found that permission had been granted. This finding was accepted by the Board of

fore the officers actually entered the kitchen, both petitioners became aware of their presence and attempted to escape; they were stopped (Lam at an exit, Yi outside) and brought to the kitchen for questioning which resulted in admissions of unlawful presence in this country. Prior to the questioning of petitioners, another alien employee who had sought to run out had admitted that he was in the country illegally (Pet. 4a). Petitioners were then searched, and seamen's documents were found which indicated that each had overstayed his leave. They were taken to the immigration office where, after being given the warnings required by *Miranda* v. *Arizona*, 384 U.S. 436, they were interrogated through an interpreter and gave sworn statements of their alienage and unlawful presence (Pet. 4a and n. 2).

The evidence upon which the deportation orders were based was lawfully obtained. Immigration officers are authorized by 8 U.S.C. 1357 to interrogate without a warrant "any alien or person believed to be an alien as to his right to be or to remain in the United States." As the court below held, in the circumstances of this case that grant of statutory authority was properly invoked (Pet. 9a-11a). The informer's tip, the periodic surveillance of the restaurant, the admission of one of the employee aliens that he had entered the country illegally prior to any questioning of petitioners and petitioners' attempts

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Immigration Appeals (Pet. 24a) and found by the court of appeals to have adequate support in the administrative record (Pet. 11a n. 9).

to flee prior to their interrogation established a sufficiently reasonable suspicion concerning petitioners' status to justify detaining them temporarily for purposes of interrogation. See *Terry* v. *Ohio*, 392 U.S. 1.[3] Their admissions, when interrogated, afforded the officers probable cause to arrest them and take them to the immigration office. Nothing in *Coolidge* v. *New Hampshire*, No. 323, this Term, decided on June 21, 1971, purports to require an arrest warrant in these circumstances (see slip op. of Mr. Justice Stewart, p. 33). The sworn statements which petitioners gave after receiving *Miranda* warnings at that office provided the legitimate evidence upon which the deportation orders were based.[4]

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[3] The question whether temporary detention constitutes sufficient "custody" to require pre-interrogation *Miranda* warnings is presently before this Court in a different context, *United States* v. *Campos-Serrano*, No. 1028, this Term, certiorari granted March 1, 1971. We do not believe, however, that there is any reason to defer disposition of the petition here until after *Campos-Serrano* is decided. The court of appeals in that case agreed with the court below that the warnings are not required where the interrogation is undertaken (as it was here) to determine only status and not whether a criminal violation had occurred. *United States* v. *Campos-Serrano*, 430 F. 2d 173, 176 (C.A. 7). In *Campos-Serrano*, however, the court below found (wrongly, we submit) that there was an "overbearing atmosphere" which created "the requisite degree of compulsion" to require the warning, since an issue of possible criminal violation had arisen before the interview resulting in the excluded statement. 430 F. 2d at 177-178. No such circumstances were found here.

[4] The officers' presence in the public portion of the restaurant was clearly proper (see Pet. 3a) and we do not understand that any contrary assertion is being made. It is unnecessary here to determine whether the officers entered the

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY 1971.

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kitchen portion unlawfully. As the administrative record makes plain, the aliens—including petitioners—sought to escape prior to the officers' entry into the kitchen. Cf. *Peters* v. *New York*, 392 U.S. 40, 66-67. Furthermore, even assuming *arguendo* that the entry into the kitchen was without consent of the manager, there is a serious question whether petitioners have standing to complain. *Cf. Alderman* v. *United States*, 394 U.S. 165, 171-173. Finally, there was sufficient basis for the administrative authorities to credit the testimony of the officer in charge, rather than the assistant manager on this question (Pet. 24a). Indeed, the manager did not testify that he had denied entry to the kitchen, but rather that he had not specifically granted affirmative approval (Pet. 18a-20a). In these circumstances, the court of appeals had ample basis to accept the administrative finding (Pet. 11a n. 9). Petitioners to the contrary, the "clear, unequivocal and convincing evidence" test of *Woodby* v. *Immigration Service*, 385 U.S. 276, 286, applies only to the sufficiency of the evidence establishing alienage and unlawful presence, not to the question of the legality of the acquisition of that evidence.

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